

**CAUTION:** The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

**Executive Order 05-12**

The Deputy Director of Operations for the IDOA, MWBE Division, was found to exercise purchasing and procurement authority on behalf of the State and was therefore prohibited from soliciting political contributions for her Father's campaign for county sheriff.

December 21, 2005  
No. 05-I-16

**BACKGROUND:**

The father of the Deputy Director of Operations for the Indiana Department of Administration, (IDOA) Minority and Women's Business Enterprises Division (MWBE) is currently campaigning to be slated as the Republican candidate for Marion County Sheriff. The elections will be held in 2006. He will participate in the Marion County slating convention, and if successful, he will proceed to the Primary Election in May and eventually, the General Election in November.

His daughter became a state employee on April 4, 2005. Her position is Deputy Director of Operations for the Department of Administration, Minority and Women's Business Enterprises Division. It is her understanding that in this position she is not required to file an annual financial disclosure statement.

**DETAIL INFORMATION**

As Deputy Director, she is responsible for approving requisitions made on behalf of the Minority and Women's Business Enterprises Division. A requisition is a request to make a purchase. It includes the item(s) to be purchased and the expected purchase amount(s). Once she approves a requisition, it is forwarded to an IDOA buyer to make the actual purchase. In this role, she does not speak directly with vendors, nor does she review final purchase prices and make the vendor selection.

Also, as Deputy Director, she serves on Request for Proposal evaluation teams. In this role, she reviews proposals submitted by vendors on behalf of the Minority and Women's Business Enterprises Division. After review, she submits an evaluation of the management expertise and recommendation to the other members of the team. The team then collaboratively evaluates and scores the proposals. The IDOA Procurement Division combines this score with the scores received on the Price, Buy Indiana Information, and the MWBE Participation Plan to determine the winning vendor. (The evaluation team's section equals 30 out of a possible 100 points per proposal).

Finally, as Deputy Director, she is responsible for creating operational policies regarding the process, review, and determination of applications for certification as a Minority and/or Woman owned business. She serves on the division's Certification Review Committee, which evaluates the recommendation of the individual reviewer and determines whether the applicant firm should receive state certification. While she is certain this is not directly related to State purchasing, the outcome does affect a firm's ability to do business with the State.

**ISSUE:**

The issue is whether the Deputy Director falls within the definition of individuals who may not solicit political contributions on behalf of any candidate for public office. Specifically is the Deputy Director a state employee "with purchasing or procurement authority on behalf of the State"?

**RELEVANT LAW:**

## IC 4-15-10-2; Political activities

Sec. 2. Except when on duty or acting in an official capacity and except where otherwise provided by state or federal law, no employee shall be prohibited from engaging in political activity or be denied the right to refrain from engaging in such activity.

## Executive Order 05-12

3. The heads of all state agencies and instrumentalities of the executive department, including all bodies corporate and politic, and all employees or special state appointees with purchasing or procurement authority on behalf of the State, shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.

## Proposed Ethics Rule LSA # 124

42 IAC 1-5-1 Political activity

Authority: IC 4-2-7-5

Affected: IC 3-9-2; IC 4-2-6-1

### **ANALYSIS:**

There are several factors to consider with respect to this issue. One issue is that political activity and the ability to engage in political activity is directly connected with the freedoms of speech and assembly which are guaranteed in the First Amendment of the United States Constitution. As an acknowledgement of that relationship, the Indiana State Employees "Bill of Rights" found in IC 4-15-10 protects state employees' freedoms of expression and assembly by authorizing political activity except when "on duty" or "acting in an official capacity". Obviously; however, the state has a compelling interest in curbing the influence of partisan politics and political favoritism which may create conflicts of interest and ultimately inhibit the state government's ability to ethically perform its responsibilities in a fair and impartial fashion.

Thus the limitations imposed on political activity are minimal given the risk of conflicts of interest or unethical behavior by certain state employees. The limitation in question prohibits state employees who have purchasing or procurement authority on behalf of the State of Indiana to refrain from soliciting political contributions for any candidate. The rationale behind this limitation is easy to understand. When a state employee has purchasing or procurement authority on behalf of the state, that employee exercises the sovereign power of the state in that the employee has discretion to spend the money of the taxpayers of the State of Indiana. There are a number of checks and balances which have been put in place to prevent or deter an individual state employee from being able to abuse this responsibility to the taxpayers. In other words, it is rare to find single individuals with sole discretion in the exercise of purchasing or procurement authority for very large expenditures. In many instances such as the one in question, the purchasing authority has been spread out over a number of individuals or even among boards and committees in order to minimize the ability of a single individual to mispend or squander taxpayer dollars.

When a state employee has purchasing or procurement authority, not only does that person have a fiduciary responsibility to the citizens of the state, that person also has a large amount of influence and power that comes in the form of being a "gatekeeper" (so to speak) of funds which are sought by many businesses, vendors, contractors, and grantees. The history of state government is replete with examples of undue influence being exercised to pressure or entice state employees to direct funds to particular special interests in breach of their fiduciary responsibility to the taxpayers. In order to foster the citizen's trust in state government, purchasing and procurement authority has been the subject of particular scrutiny.

The language in Executive Order 05-12 talks in terms of "purchasing or procurement" authority ... period. Neither the Executive Order nor the new proposed rules make a distinction between "final" purchasing or procurement authority, or "limited" purchasing or procurement authority. It can reasonable be inferred that the rule was intended to prohibit the solicitation of political contributions by state employees with any degree of purchasing or procurement authority whatsoever. In fact, a strict reading of the language in the Executive Order would support this interpretation. The question then becomes whether the particular consequences in this case were intended.

#### **CONCLUSION:**

Executive Order 05-12 prohibits certain state employees from soliciting political contributions on behalf of any candidate for any public office, unless that individual is the candidate himself or herself. This prohibition applies to "all employees or special state appointees with purchasing or procurement authority on behalf of the State." Because the Deputy Director exercises purchasing or procurement authority on behalf of the Indiana Department of Administration, she is prohibited from soliciting political contributions to her father's political campaign for county sheriff.